Statement of PPL Montana
Before the Natural Resources Committee
Of the Montana State House
Regarding House Bill No. 831
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Mr. Chairman, Members of the Committee.

My name is Holly Franz. I represent PPL Montana and rise in support of HB 831.

HB 831 addresses Montana's most pressing water right issue – groundwater permitting. Following the *Trout Unlimited v. DNRC* decision, there is no functional groundwater permitting system in the Upper Missouri River and the Teton River basin. PPL Montana believes Montana cannot afford to allow this situation to continue and supports HB 831 as an effective approach to allow new ground water development while providing protections for senior water users.

HB 831 applies only to the legislatively closed basins of the Teton, Upper Clark Fork (above Milltown Dam), Jefferson/Madison, Upper Missouri (above Morony Dam), and the Bitterroot River drainages and to the basins closed administratively by DNRC. I have provided the committee secretary with a list of the administratively closed basins. In all of these basins, it has already been determined that surface water is over appropriated and further appropriations will adversely affect existing water rights.

I am most familiar with the Teton, Madison, Jefferson, and Upper Missouri River basin closures. These basins were closed were in response to the extensive evidence introduced during the Upper Missouri River Basin water reservation proceedings. This evidence showed that the Beaverhead, Red Rock, Big Hole, Ruby, Boulder, Jefferson, Gallatin, East Gallatin, Smith, Dearborn, Sun, and Teton Rivers were all fully appropriated based solely on agricultural water rights. In addition, DNRC prepared a water availability computer model, updated in 1997, confirming that no additional water is available for surface water appropriation except during high spring flows in occasional wet years. There is no question that the surface waters of these closed basins are fully appropriated.

There is also no question that groundwater is connected to surface water. There have been many studies throughout the closed basins demonstrating this connection. For example, a 1964 United States Geological Society (USGS) study of the water resources of the Gallatin Valley concluded that an increase in consumptive uses of groundwater will reduce natural discharges into surface water on a one to one basis with most of the loss occurring during the later part of the irrigation season. In other areas, the connection

is less direct. While Montana's prior appropriation doctrine generally encourages development of available ground water, that development cannot adversely affect existing water rights.

HB 831 allows groundwater development to go forward in the closed basins, but requires that impacts to surface water be offset by aquifer recharge or mitigation plans. Mitigation plans may be as simple as changing existing surface water rights to make up for the impacts of new groundwater development. Aquifer recharge may include using high spring flows, when senior rights are satisfied, to supplement the aquifer and natural discharges to surface water. HB 831 also allows aquifer storage and recovery projects which utilize the storage capacity of an aquifer to store water for later use.

HB 831 works within the current permitting system administered by DNRC. In fact, the bill's requirements are very similar to DNRC's existing regulations with the exception of the water quality component.

Early in the legislative process, PPL Montana established criteria for reviewing and supporting legislation addressing the *Trout Unlimited v. DRNC* decision. Those criteria are:

- Applicants should be required to provide scientific data to establish the impact, if any, of ground water withdrawals on surface water flows.
- Definition of ground water must be scientifically sound and not a "legal fiction."
- Current protections in the law for senior water rights should be maintained with no amendments to the permitting and change criteria in 85-2-311 and 85-2-402.
- Ground water applicants should be allowed to proceed in the DNRC permitting process to show that an augmentation plan or other change in use can occur without adversely affecting senior water rights.

HB 831 satisfies all of these criteria. PPL Montana believes Montana should move forward to protect existing water rights while allowing ground water to be developed and existing water rights to be changed to meet Montana's economic needs. HB 831 accomplishes this balance. Please vote do pass for HB 831.

Sampling of Ground Water Studies in the Upper Missouri River Basin

Gallatin Valley

In 1964, the United States Geological Society (USGS) conducted a detailed study of the water resources of the Gallatin Valley including both surface and ground water. The study was conducted, in part, to determine if ground water could be used to expand irrigation. After documenting a substantial ground water resource, the study concluded:

> Increase in the consumptive use of ground water within the valley would reduce natural discharge from the valley by an amount equal to the volume used. Because the principal areas of ground-water discharge by evapotranspiration would be the last to be affected by withdrawals of ground water, nearly all the ground-water use would be reflected by a corresponding reduction in surface-water outflow from the valley. The reduction would be caused in part by a diminution of ground-water discharge into streams and in part by loss of surplus surface water to ground-water storage, and would occur principally during the later part of the irrigation season.
>
> If, in making plans for further development of the ground-water resources of the Gallatin Valley, plans were made also for augmenting the recharge to the ground-water reservoir, the volume of ground water that could be used consumptively each year without exhausting the supply would be increased.

Beaverhead River

The Beaverhead Groundwater Project was conducted from 1991 to 1996 as part of a cooperation study by the US Bureau of Reclamation, DNRC, the USGS, the East Bench Irrigation District, and the Montana Power Company. One of the purposes of the study was to analyze the relationship between surface water and the ground water aquifers south of Dillon. The study concluded that a large volume of groundwater was stored in the aquifers, and irrigation wells had not "substantially" affected stream flow. The ground water model developed as part of the study predicted that if irrigation well withdrawals were increased by 95 cfs, surface flows would be reduced by an average of about 7 cfs, equaling 7.4 percent of the additional amount pumped.

Smith River

In 2003, DNRC issued the Smith River Basin Permit and Change Applications Supplemental Environmental Assessment which analyzed the cumulative impacts of eight ground water permit applications, one surface water application, and six change applications. The ground water model developed in this study predicted the volume of stream flow depletion in the first year of pumping would be 37% of the volume pumped with the percentage of stream flow depletion increasing as pumping continued into the future. The USGS is currently conducting a more in-depth three and one-half year study of the upper Smith River basin in cooperation with the Meagher conservation district.

Prepared by Holly Franz
On Behalf of PPL Montana
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Basin Closure and Legal Water Availability

In 1993, the legislature adopted the Teton, Jefferson/Madison, and Upper Missouri River basin closures. All of these closures were in response to the Upper Missouri River Basin water reservation proceedings.

The water reservation proceeding involved instream flow applications filed by the Department of Fish, Wildlife & Parks (DFWP), the old Montana Department of Health and Environmental Science (DHES), and the U.S. Bureau of Land Management (BLM) and consumptive use applications filed by a number of municipalities and conservation districts. Between applicants and objectors, the proceedings included most of the water right interests in the basin.

The proceedings generated a large amount of evidence and weeks of hearings. Agricultural groups introduced testimony showing that the Beaverhead, Red Rock, Big Hole, Ruby, Boulder, Jefferson, Gallatin, East Gallatin, Smith, Dearborn, Sun, and Teton Rivers were all fully appropriated based on agricultural claims alone. In addition, the Montana Power Company and the Bureau of Reclamation provided evidence concerning their water rights at the Missouri River dams. Finally, DNRC prepared a water availability computer model, which was later updated in 1997, that confirmed that no additional water is available for surface water appropriation except during high spring flows in occasional wet years.

With this evidence, the Board granted extensive instream flow and consumptive use water reservations, but added a condition that the reservations "shall have no force and effect in any basin.... for the period of time and for any class of uses for which permit applications are precluded." This condition applies to all of the granted water reservations except for the municipal reservations. The Board concluded that with this condition, there would be no adverse affect to existing water users and encouraged the objectors to close the basins to new appropriations if in fact there was no more water legally available.

In response, Rep. Mike Foster introduced the Upper Missouri River basin closure, Rep. Sam Rose introduced the Teton River basin closure, and Senator Chuck Swysgood introduced the Jefferson/Madison basin closure. The various closures were supported by the Montana Stockgrowers, Montana Farm Bureau, Montana Water Resources Association, the Montana Power Company, and eventually by the DFWP and Trout Unlimited. The only controversial issue was proposed amendments that either eliminated the Board condition altogether or completely eliminated the instream flow reservations. Neither of these amendments was successful.

While there is debate over the interpretation of the Board's condition, if a permit application is allowed under the basin closure, then proof of legal water availability must consider the extensive instream flow and consumptive use water reservations in addition to other existing water rights.

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